

2013 DRAFTING REQUEST

Bill

Received: 11/28/2012 Received By: phurley
 Wanted: As time permits Same as LRB: -2415
 For: Steve Kestell (608) 266-8530 By/Representing: Chris
 May Contact: Drafter: phurley
 Subject: Courts - miscellaneous/other Addl. Drafters:
 Criminal Law - abortion Extra Copies:

Submit via email: YES
 Requester's email: Rep.Kestell@legis.wisconsin.gov
 Carbon copy (CC) to:

Pre Topic:

No specific pre topic given

Topic:

Sex selective abortion

Instructions:

See attached
 t/c 1-3-13 with Chris Kulow. Put in hold for now; office is still determining direction for this draft.

per
 Chris
 5/23/13

Drafting History:

Vers.	Drafted	Reviewed	Typed	Proofed	Submitted	Jacketed	Required
/P1	phurley 3/20/2013	csicilia 3/18/2013	jmurphy 3/18/2013	_____	sbasford 3/18/2013		State
/1		csicilia 3/27/2013	rschluet 3/27/2013	_____	lparisi 3/27/2013	roose 5/23/2013	State

FE Sent For:

<END>

At
 Intro.

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/1		csicilia 3/27/2013	rschluet 3/27/2013	_____	lparisi 3/27/2013		State

FE Sent For:

<END>

FE Sent For:

Hurley, Peggy

From: Hurley, Peggy
Sent: Tuesday, December 04, 2012 9:58 AM
To: Kulow, Chris
Subject: RE: Fed Legislation

Hi Chris,

Thank you for getting back to me. Those penalties would fall somewhere between a Class H and a Class I felony. A Class H felony allows for a fine up to \$10,000, imprisonment up to 6 years, or both. A Class I felony has the same maximum fine, but imprisonment for up to 3 years and six months, or both. If you tell me which felony you'd like to see (or which other penalty would be appropriate – you can look at s. 939.50 and 939.51 to see the penalties for each felony or misdemeanor) in your bill, I can draft to your specifications.

In reviewing the federal legislation, I am still wondering about the purpose of the injunction. If an act is a crime, there doesn't need to be any civil injunction to prevent it from occurring – it's already a crime punishable by imprisonment and fines. I am not all that familiar with federal criminal statutes, so perhaps that is something seen in the federal statutes, but I can't think of another statute in Wisconsin that has a similar provision.

Finally, this bill is quite different from the materials you forwarded to me earlier, so I am not sure which one to follow as I draft. I am assuming that you want me to follow the first draft, because there are a lot of things in the federal legislation (e.g. extensive findings of fact) that are not found in our legislation, but I am not certain. If you want, we can have a meeting to go over the differences and you can let me know which provisions you would like included in your bill. I look forward to hearing from you.

Peggy

From: Kulow, Chris
Sent: Tuesday, December 04, 2012 9:43 AM
To: Hurley, Peggy
Subject: Fed Legislation

Peggy,

I have attached the federal legislation that we want to model our bill on. I believe there are penalties on Pg 12 of a fine and imprisonment of not more than 5 years? Does that mean misdemeanor?

<< File: 20121203140249124.pdf >>

Christopher Kulow
Office of State Representative Steve Kestell
212 North - State Capitol; 266-8530
<http://kestell.assembly.wisconsin.gov>

Hurley, Peggy

From: Kulow, Chris
Sent: Wednesday, November 28, 2012 2:23 PM
To: Hurley, Peggy
Subject: Sex Selection Abortions

We would like to mirror this sample as closely as possible. Let me know if you have any questions.



sexselectiveabor...

Christopher Kulow
Office of State Representative Steve Kestell
212 North - State Capitol; 266-8530
<http://kestell.assembly.wisconsin.gov>

2012 NATIONAL RIGHT TO LIFE
SAMPLE LEGISLATION TO BAR
ABORTIONS SOLELY AS A MEANS OF SEX SELECTION

Section 1. Legislative Findings and Purpose.

Section 2. Definitions.

Section 3. Abortions as a means of sex selection.

Section 4. Civil damages for abortions as a method of sex selection.

Section 5. Injunctive relief.

Section 6. Attorney's fee.

Section 7. Privacy of woman upon whom an abortion is performed or attempted.

Section 8. Severability.

Section 1. Legislative Findings and Purpose.

Comment: This section could include an assertion of a compelling state interest in unborn life throughout pregnancy, and profess an intent to reasonably regulate abortion in accordance with the views of the majority of the Supreme Court.

Section 2. Definitions.

(a) "Abortion" means the use or prescription of any instrument, medicine, drug or any other substance or device to terminate the pregnancy of a woman known to be pregnant with an intention other than to increase the probability of a live birth, to preserve the life or health of the

child after live birth, or to remove a dead fetus who died as the result of natural causes in utero, accidental trauma, or a criminal assault on the pregnant woman or her unborn child.

(b) "Attempt to perform an abortion" means to do or omit to do anything that, under the circumstances as the actor believes them to be, is an act or omission constituting a substantial step in a course of conduct planned to culminate in an abortion. Such substantial steps include, but are not limited to, 1) agreeing with an individual to perform an abortion on that individual or on some other person, whether or not the term "abortion" is used in the agreement, and whether or not the agreement is contingent on another factor such as receipt of payment or a determination of pregnancy; 2) scheduling or planning a time to perform an abortion on an individual, whether or not the term "abortion" is used, and whether or not the performance is contingent on another factor such as receipt of payment or a determination of pregnancy. This definition shall not be construed to require that an abortion procedure actually be initiated for an attempt to occur.

Comment : The first sentence is drawn from the definition of "attempt" in Model Penal Code sec. 5.01(1) (Official Draft & Explanatory Notes 1985). The language is intended to be applied consistently with the rulings of the court in *Adams v. State*, 81 Nev. 524, 527, 407 P.2d 169, 171 (1965). In that case the court held that defendant's acts had proceeded beyond mere preparation when she had arranged place and price for abortion, instructed her patient on positioning, held a syringe in one hand and placed her hand on the patient's knee with the other. *Id.* No instruments actually touched the woman's body, but the court reasoned that the practical administration of the law should not be destroyed by

"subtleties as to what constitutes preparation and what an act done toward the commission of a crime." Id.

Section 3. Abortions as a means of sex selection.

No person shall intentionally perform or attempt to perform an abortion with knowledge that the pregnant woman is seeking the abortion solely on account of the sex of the unborn child.

Comment: This language is adapted from Ill. Rev. Stat. ch. 38, para. 81-26(8).

Section 4. Civil damages for abortions as a method of sex selection. Any person upon whom an abortion unlawful under section 3 was performed, the father of the unborn child who was the subject of such an abortion, or the grandparent of such an unborn child may maintain an action against the person who performed the abortion for \$10,000 in punitive damages and treble whatever actual damages the plaintiff may have sustained. No person shall be estopped from recovery in such a suit on the ground that either the plaintiff or the person upon whom the abortion was performed gave consent to the abortion.

Section 5. Injunctive relief. A cause of action for injunctive relief against any person who has knowingly violated a provision of this Act may be maintained by the female upon whom an abortion was performed or attempted to be performed in violation of this Act; any person who is the spouse, parent, sibling or guardian of, or a current or former licensed health care provider of, the female upon whom an abortion has been performed or attempted to be performed in violation of this act; by a State's attorney with appropriate jurisdiction; or by the

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Attorney General. The injunction shall prevent the abortion provider from performing further abortions in violation of this Act in the State of (INSERT STATE).

Any person who knowingly violates the terms of an injunction issued in accordance with this Act shall be subject to civil contempt, and shall be fined \$10,000 for the first violation, \$50,000 for the second violation, \$100,000 for the third violation, and for each succeeding violation an amount in excess of \$100,000 sufficient to deter future violations. The fines shall be the exclusive penalties for such contempt. Each performance or attempted performance of an abortion in violation of the terms of an injunction is a separate violation. These fines shall be cumulative. However, no fine may be assessed against the woman on whom an abortion is performed or attempted.

Section 6. Attorney's fee. If judgment is rendered in favor of the plaintiff in any action described in this section, the court shall also render judgment for a reasonable attorney's fee in favor of the plaintiff against the defendant. If judgment is rendered in favor of the defendant and the court finds that the plaintiff's suit was frivolous and brought in bad faith, the court shall also render judgment for a reasonable attorney's fee in favor of the defendant against the plaintiff.

Section 7. Privacy of woman upon whom an abortion is performed or attempted. In every proceeding or action brought under this Act, the anonymity of any woman upon whom an abortion is performed or attempted shall be preserved from public disclosure unless she gives her consent to such disclosure. The court, upon motion or sua sponte, shall issue orders to the

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(u)

parties, witnesses, and counsel, and shall direct the sealing of the record and exclusion of individuals from courtrooms or hearing rooms, to the extent necessary to safeguard her identity from public disclosure. In the absence of written consent of the woman upon whom an abortion has been performed or attempted, anyone who brings an action under Section 4 shall do so under a pseudonym.

Section 8. Severability. If any provision, word, phrase, or clause of this Act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect the provisions, words, phrases, clauses or applications of this Act which can be given effect without the invalid provision, word, phrase, clause, or application and to this end, the provisions, words, phrases, and clauses of this Act are declared to be severable. If the application of this law to the period of pregnancy prior to viability is held invalid, then such invalidity shall not affect its application to the period of pregnancy subsequent to viability.

Comment: The last sentence is drawn from Ill. Rev. Stat. ch. 38, para. 81-26(8). The rest is a standard severability provision, which assures that in the unlikely event some application or portion of the statute is struck as unconstitutional, the rest of the statute will not also be invalidated.

Suspend the Rules And Pass the Bill, H.R. 3541, With Amendments

(The amendments strike all after the enacting clause and insert a new text and a new title)

112TH CONGRESS
2D SESSION

H. R. 3541

To prohibit discrimination against the unborn on the basis of sex or race,
and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

DECEMBER 1, 2011

Mr. FRANKS of Arizona (for himself, Mr. COLE, Mr. HUELSKAMP, Mr. LANKFORD, Mr. FLEMING, Mr. BISHOP of Utah, Mr. PENCE, Mr. CHABOT, Mr. POSEY, Mr. GRAVES of Georgia, Mr. GOHMERT, Mr. HULTGREN, Mr. GARRETT, Mrs. SCHMIDT, Mr. BRADY of Texas, Mr. FORBES, Mr. WILSON of South Carolina, Mr. STUTZMAN, Mrs. LUMMIS, Mr. ROE of Tennessee, Mr. NEUGEBAUER, Mr. HARRIS, Mr. YODER, Mr. WALBERG, Mr. BOREN, Mr. BARTLETT, Mr. SMITH of Texas, Mr. LIPINSKI, Mrs. BLACK, Mr. BOUSTANY, Mr. WESTMORELAND, Mr. PEARCE, Mr. HUIZENGA of Michigan, Mr. ROSS of Florida, Mr. KINZINGER of Illinois, Mr. BURTON of Indiana, Mr. AKIN, Mr. FORTENBERRY, Mr. JONES, Mr. DUNCAN of Tennessee, Mrs. BLACKBURN, Mr. CRAWFORD, Mr. McCaul, Mr. BROUN of Georgia, Mr. MANZULLO, Mr. MCHENRY, Mr. LATTI, Mrs. ROBY, Mr. SCALISE, Mr. FARENTHOLD, Mr. MCCOTTER, Mr. COBLE, Mr. MILLER of Florida, Mr. PETERSON, and Mr. SMITH of New Jersey) introduced the following bill; which was referred to the Committee on the Judiciary

A BILL

To prohibit discrimination against the unborn on the basis
of sex or race, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Prenatal Non-
5 discrimination Act (PRENDA) of 2012”.

6 **SEC. 2. FINDINGS AND CONSTITUTIONAL AUTHORITY.**

7 (a) FINDINGS.—The Congress makes the following
8 findings:

9 (1) Women are a vital part of American society
10 and culture and possess the same fundamental
11 human rights and civil rights as men.

12 (2) United States law prohibits the dissimilar
13 treatment of males and females who are similarly
14 situated and prohibits sex discrimination in various
15 contexts, including the provision of employment,
16 education, housing, health insurance coverage, and
17 athletics.

18 (3) Sex is an immutable characteristic ascer-
19 tainable at the earliest stages of human development
20 through existing medical technology and procedures
21 commonly in use, including maternal-fetal blood-
22 stream DNA sampling, amniocentesis, chorionic
23 villus sampling or “CVS”, and obstetric ultrasound.
24 In addition to medically assisted sex determination,
25 a growing sex determination niche industry has de-

1 veloped and is marketing low cost commercial prod-
2 ucts, widely advertised and available, that aid in the
3 sex determination of an unborn child without the aid
4 of medical professionals. Experts have demonstrated
5 that the sex-selection industry is on the rise and pre-
6 dict that it will continue to be a growing trend in
7 the United States. Sex determination is always a
8 necessary step to the procurement of a sex-selection
9 abortion.

10 (4) A "sex-selection abortion" is an abortion
11 undertaken for purposes of eliminating an unborn
12 child based on the sex or gender of the child. Sex-
13 selection abortion is barbaric, and described by
14 scholars and civil rights advocates as an act of sex-
15 based or gender-based violence, predicated on sex
16 discrimination. Sex-selection abortions are typically
17 late-term abortions performed in the 2nd or 3rd tri-
18 mester of pregnancy, after the unborn child has de-
19 veloped sufficiently to feel pain. Substantial medical
20 evidence proves that an unborn child can experience
21 pain at 20 weeks after conception, and perhaps sub-
22 stantially earlier. By definition, sex-selection abor-
23 tions do not implicate the health of the mother of
24 the unborn, but instead are elective procedures moti-
25 vated by sex or gender bias.

1 (5) The targeted victims of sex-selection abor-
2 tions performed in the United States and worldwide
3 are overwhelmingly female. The selective abortion of
4 females is female infanticide, the intentional killing
5 of unborn females, due to the preference for male
6 offspring or "son preference". Son preference is re-
7 inforced by the low value associated, by some seg-
8 ments of the world community, with female off-
9 spring. Those segments tend to regard female off-
10 spring as financial burdens to a family over their
11 lifetime due to their perceived inability to earn or
12 provide financially for the family unit as can a male.
13 In addition, due to social and legal convention, fe-
14 male offspring are less likely to carry on the family
15 name. "Son preference" is one of the most evident
16 manifestations of sex or gender discrimination in
17 any society, undermining female equality, and fuel-
18 ing the elimination of females' right to exist in in-
19 stances of sex-selection abortion.

20 (6) Sex-selection abortions are not expressly
21 prohibited by United States law or the laws of 47
22 States. Sex-selection abortions are performed in the
23 United States. In a March 2008 report published in
24 the Proceedings of the National Academy of
25 Sciences, Columbia University economists Douglas

1 Almond and Lena Edlund examined the sex ratio of
2 United States-born children and found "evidence of
3 sex selection, most likely at the prenatal stage". The
4 data revealed obvious "son preference" in the form
5 of unnatural sex-ratio imbalances within certain seg-
6 ments of the United States population, primarily
7 those segments tracing their ethnic or cultural ori-
8 gins to countries where sex-selection abortion is
9 prevalent. The evidence strongly suggests that some
10 Americans are exercising sex-selection abortion prac-
11 tices within the United States consistent with dis-
12 criminatory practices common to their country of or-
13 igin, or the country to which they trace their ances-
14 try. While sex-selection abortions are more common
15 outside the United States, the evidence reveals that
16 female feticide is also occurring in the United
17 States.

18 (7) The American public supports a prohibition
19 of sex-selection abortion. In a March 2006 Zogby
20 International poll, 86 percent of Americans agreed
21 that sex-selection abortion should be illegal, yet only
22 3 States proscribe sex-selection abortion.

23 (8) Despite the failure of the United States to
24 proscribe sex-selection abortion, the United States
25 Congress has expressed repeatedly, through Con-

1 gressional resolution, strong condemnation of poli-
2 cies promoting sex-selection abortion in the “Com-
3 munist Government of China”. Likewise, at the
4 2007 United Nation’s Annual Meeting of the Com-
5 mission on the Status of Women, 51st Session, the
6 United States delegation spearheaded a resolution
7 calling on countries to condemn sex-selective abor-
8 tion, a policy directly contradictory to the permis-
9 siveness of current United States law, which places
10 no restriction on the practice of sex-selection abor-
11 tion. The United Nations Commission on the Status
12 of Women has urged governments of all nations “to
13 take necessary measures to prevent . . . prenatal
14 sex selection”.

15 (9) A 1990 report by Harvard University econ-
16 omist Amartya Sen, estimated that more than 100
17 million women were “demographically missing” from
18 the world as early as 1990 due to sexist practices,
19 including sex-selection abortion. Many experts be-
20 lieve sex-selection abortion is the primary cause.

21 Current estimates of women missing from the world
22 range in the hundreds of millions.

23 (10) Countries with longstanding experience
24 with sex-selection abortion—such as the Republic of
25 India, the United Kingdom, and the People’s Repub-

1 lic of China—have enacted restrictions on sex-selec-
2 tion, and have steadily continued to strengthen pro-
3 hibitions and penalties. The United States, by con-
4 trast, has no law in place to restrict sex-selection
5 abortion, establishing the United States as affording
6 less protection from sex-based feticide than the Re-
7 public of India or the People’s Republic of China,
8 whose recent practices of sex-selection abortion were
9 vehemently and repeatedly condemned by United
10 States congressional resolutions and by the United
11 States Ambassador to the Commission on the Status
12 of Women. Public statements from within the med-
13 ical community reveal that citizens of other countries
14 come to the United States for sex-selection proce-
15 dures that would be criminal in their country of ori-
16 gin. Because the United States permits abortion on
17 the basis of sex, the United States may effectively
18 function as a “safe haven” for those who seek to
19 have American physicians do what would otherwise
20 be criminal in their home countries—a sex-selection
21 abortion, most likely late-term.

22 (11) The American medical community opposes
23 sex-selection. The American Congress of Obstetri-
24 cians and Gynecologists, commonly known as
25 “ACOG,” stated in its 2007 Ethics Committee Opin-

1 ion, Number 360, that sex-selection is inappropriate
2 because it “ultimately supports sexist practices.”
3 The American Society of Reproductive Medicine (
4 commonly known as “ASRM”) 2004 Ethics Com-
5 mittee Opinion on sex-selection notes that central to
6 the controversy of sex-selection is the potential for
7 “inherent gender discrimination”, . . .the “risk of
8 psychological harm to sex-selected offspring (i.e., by
9 placing on them expectations that are too
10 high),”. . . and “reinforcement of gender bias in so-
11 ciety as a whole.” Embryo sex-selection, ASRM
12 notes, remains “vulnerable to the judgment that no
13 matter what its basis, [the method] identifies gender
14 as a reason to value one person over another, and
15 it supports socially constructed stereotypes of what
16 gender means.” In doing so, it not only “reinforces
17 possibilities of unfair discrimination, but may
18 trivialize human reproduction by making it depend
19 on the selection of nonessential features of off-
20 spring.” The ASRM ethics opinion continues, “ongo-

21 ing problems with the status of women in the United
22 States make it necessary to take account of concerns
23 for the impact of sex-selection on goals of gender
24 equality.” The American Association of Pro-Life Ob-
25 stetricians and Gynecologists, an organization with

1 hundreds of members - many of whom are former
2 abortionists - makes the following declaration: "Sex
3 selection abortions are more graphic examples of the
4 damage that abortion inflicts on women. In addition
5 to increasing premature labor in subsequent preg-
6 nancies, increasing suicide and major depression,
7 and increasing the risk of breast cancer in teens who
8 abort their first pregnancy and delay childbearing,
9 sex selection abortions are often targeted at fetuses
10 simply because the fetus is female. As physicians
11 who care for both the mother and her unborn child,
12 the American Association of Pro-Life Obstetricians
13 and Gynecologists vigorously opposes aborting
14 fetuses because of their gender." The President's
15 Council on Bioethics published a Working Paper
16 stating the council's belief that society's respect for
17 reproductive freedom does not prohibit the regula-
18 tion or prohibition of "sex control," defined as the
19 use of various medical technologies to choose the sex
20 of one's child. The publication expresses concern
21 that "sex control might lead to . . . dehumanization
22 and a new eugenics."

23 (12) Sex-selection abortion results in an un-
24 natural sex-ratio imbalance. An unnatural sex-ratio
25 imbalance is undesirable, due to the inability of the

1 numerically predominant sex to find mates. Experts
2 worldwide document that a significant sex-ratio im-
3 balance in which males numerically predominate can
4 be a cause of increased violence and militancy within
5 a society. Likewise, an unnatural sex-ratio imbalance
6 gives rise to the commoditization of humans in the
7 form of human trafficking, and a consequent in-
8 crease in kidnapping and other violent crime.

9 (13) Sex-selection abortions have the effect of
10 diminishing the representation of women in the
11 American population, and therefore, the American
12 electorate.

13 (14) Sex-selection abortion reinforces sex dis-
14 crimination and has no place in a civilized society.

15 (15) The history of the United States includes
16 examples of sex discrimination. The people of the
17 United States ultimately responded in the strongest
18 possible legal terms by enacting a constitutional
19 amendment correcting elements of such discrimina-
20 tion. Women, once subjected to sex discrimination

21 that denied them the right to vote, now have suf-
22 frage guaranteed by the 19th amendment. The
23 elimination of discriminatory practices has been and
24 is among the highest priorities and greatest achieve-
25 ments of American history.

1 (16) Implicitly approving the discriminatory
2 practice of sex-selection abortion by choosing not to
3 prohibit them will reinforce these inherently dis-
4 criminatory practices, and evidence a failure to pro-
5 tect a segment of certain unborn Americans because
6 those unborn are of a sex that is disfavored. Sex-se-
7 lection abortions trivialize the value of the unborn on
8 the basis of sex, reinforcing sex discrimination, and
9 coarsening society to the humanity of all vulnerable
10 and innocent human life, making it increasingly dif-
11 ficult to protect such life. Thus, Congress has a
12 compelling interest in acting—indeed it must act—
13 to prohibit sex-selection abortion.

14 (b) CONSTITUTIONAL AUTHORITY.—In accordance
15 with the above findings, Congress enacts the following
16 pursuant to Congress' power under—

17 (1) the Commerce Clause;

18 (2) section 5 of the 14th amendment, including
19 the power to enforce the prohibition on government
20 action denying equal protection of the laws; and

21 (3) section 8 of article I to make all laws nec-
22 essary and proper for the carrying into execution of
23 powers vested by the Constitution in the Govern-
24 ment of the United States.

1 **SEC. 3. DISCRIMINATION AGAINST THE UNBORN ON THE**
2 **BASIS OF SEX.**

3 (a) IN GENERAL.—Chapter 13 of title 18, United
4 States Code, is amended by adding at the end the fol-
5 lowing:

6 **“§ 250. Discrimination against the unborn on the**
7 **basis of sex**

8 “(a) IN GENERAL.—Whoever knowingly—

9 “(1) performs an abortion knowing that such
10 abortion is sought based on the sex or gender of the
11 child;

12 “(2) uses force or the threat of force to inten-
13 tionally injure or intimidate any person for the pur-
14 pose of coercing a sex-selection abortion;

15 “(3) solicits or accepts funds for the perform-
16 ance of a sex-selection abortion; or

17 “(4) transports a woman into the United States
18 or across a State line for the purpose of obtaining
19 a sex-selection abortion;

20 or attempts to do so, shall be fined under this title or im-
21 ~~prisoned not more than 5 years, or both.~~

22 “(b) CIVIL REMEDIES.—

23 “(1) CIVIL ACTION BY WOMAN ON WHOM ABOR-
24 TION IS PERFORMED.—A woman upon whom an
25 abortion has been performed pursuant to a violation
26 of subsection (a)(2) may in a civil action against any

1 person who engaged in a violation of subsection (a)
2 obtain appropriate relief.

3 “(2) CIVIL ACTION BY RELATIVES.—The father
4 of an unborn child who is the subject of an abortion
5 performed or attempted in violation of subsection
6 (a), or a maternal grandparent of the unborn child
7 if the pregnant woman is an unemancipated minor,
8 may in a civil action against any person who en-
9 gaged in the violation, obtain appropriate relief, un-
10 less the pregnancy resulted from the plaintiff’s
11 criminal conduct or the plaintiff consented to the
12 abortion.

13 “(3) APPROPRIATE RELIEF.—Appropriate relief
14 in a civil action under this subsection includes—

15 “(A) objectively verifiable money damages
16 for all injuries, psychological and physical, in-
17 cluding loss of companionship and support, oc-
18 casioned by the violation of this section; and

19 “(B) punitive damages.

20 “(4) INJUNCTIVE RELIEF.—

21 “(A) IN GENERAL.—A qualified plaintiff
22 may in a civil action obtain injunctive relief to
23 prevent an abortion provider from performing
24 or attempting further abortions in violation of
25 this section.

1 “(B) DEFINITION.—In this paragraph the
2 term ‘qualified plaintiff’ means—

3 “(i) a woman upon whom an abortion
4 is performed or attempted in violation of
5 this section;

6 “(ii) any person who is the spouse or
7 parent of a woman upon whom an abortion
8 is performed in violation of this section; or

9 “(iii) the Attorney General.

10 “(5) ATTORNEYS FEES FOR PLAINTIFF.—The
11 court shall award a reasonable attorney’s fee as part
12 of the costs to a prevailing plaintiff in a civil action
13 under this subsection.

14 “(c) LOSS OF FEDERAL FUNDING.—A violation of
15 subsection (a) shall be deemed for the purposes of title
16 VI of the Civil Rights Act of 1964 to be discrimination
17 prohibited by section 601 of that Act.

18 “(d) REPORTING REQUIREMENT.—A physician, phy-
19 sician’s assistant, nurse, counselor, or other medical or
20 mental health professional shall report known or suspected

21 violations of any of this section to appropriate law enforce-
22 ment authorities. Whoever violates this requirement shall
23 be fined under this title or imprisoned not more than 1
24 year, or both.

1 “(e) EXPEDITED CONSIDERATION.—It shall be the
2 duty of the United States district courts, United States
3 courts of appeal, and the Supreme Court of the United
4 States to advance on the docket and to expedite to the
5 greatest possible extent the disposition of any matter
6 brought under this section.

7 “(f) EXCEPTION.—A woman upon whom a sex-selec-
8 tion abortion is performed may not be prosecuted or held
9 civilly liable for any violation of this section, or for a con-
10 spiracy to violate this section.

11 “(g) PROTECTION OF PRIVACY IN COURT PRO-
12 CEEDINGS.—

13 “(1) IN GENERAL.—Except to the extent the
14 Constitution or other similarly compelling reason re-
15 quires, in every civil or criminal action under this
16 section, the court shall make such orders as are nec-
17 essary to protect the anonymity of any woman upon
18 whom an abortion has been performed or attempted
19 if she does not give her written consent to such dis-
20 closure. Such orders may be made upon motion, but
21 shall be made sua sponte if not otherwise sought by
22 a party.

23 “(2) ORDERS TO PARTIES, WITNESSES, AND
24 COUNSEL.—The court shall issue appropriate orders
25 under paragraph (1) to the parties, witnesses, and

1 counsel and shall direct the sealing of the record and
2 exclusion of individuals from courtrooms or hearing
3 rooms to the extent necessary to safeguard her iden-
4 tity from public disclosure. Each such order shall be
5 accompanied by specific written findings explaining
6 why the anonymity of the woman must be preserved
7 from public disclosure, why the order is essential to
8 that end, how the order is narrowly tailored to serve
9 that interest, and why no reasonable less restrictive
10 alternative exists.

11 “(3) PSEUDONYM REQUIRED.—In the absence
12 of written consent of the woman upon whom an
13 abortion has been performed or attempted, any
14 party, other than a public official, who brings an ac-
15 tion under this section shall do so under a pseu-
16 donym.

17 “(4) LIMITATION.—This subsection shall not be
18 construed to conceal the identity of the plaintiff or
19 of witnesses from the defendant or from attorneys
20 for the defendant.

21 “(h) DEFINITIONS.—

22 “(1) The term ‘abortion’ means the act of using
23 or prescribing any instrument, medicine, drug, or
24 any other substance, device, or means with the in-
25 tent to terminate the clinically diagnosable preg-

1 nancy of a woman, with knowledge that the termi-
2 nation by those means will with reasonable likelihood
3 cause the death of the unborn child, unless the act
4 is done with the intent to—

5 “(A) save the life or preserve the health of
6 the unborn child;

7 “(B) remove a dead unborn child caused
8 by spontaneous abortion; or

9 “(C) remove an ectopic pregnancy.

10 “(2) The term ‘sex-selection abortion’ is an
11 abortion undertaken for purposes of eliminating an
12 unborn child based on the sex or gender of the
13 child.”.

14 (b) CLERICAL AMENDMENT.—The table of sections
15 at the beginning of chapter 13 of title 18, United States
16 Code, is amended by adding after the item relating to sec-
17 tion 249 the following new item:

“250. Discrimination against the unborn on the basis of sex.”.

18 **SEC. 4. SEVERABILITY.**

19 If any portion of this Act or the application thereof
20 to any person or circumstance is held invalid, such inva-
21 lidity shall not affect the portions or applications of this
22 Act which can be given effect without the invalid portion
23 or application.

1 **SEC. 5. RULE OF CONSTRUCTION.**

2 Nothing in this Act shall be construed to require that
3 a healthcare provider has an affirmative duty to inquire
4 as to the motivation for the abortion, absent the
5 healthcare provider having knowledge or information that
6 the abortion is being sought based on the sex or gender
7 of the child.

 Amend the title so as to read: "A bill to prohibit discrimination against the unborn on the basis of sex or gender, and for other purposes."



State of Wisconsin
2013 - 2014 LEGISLATURE



LRB-0650/P1

PJH:/.....

gs

TODAY (circled) [Signature]

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

2.27.13 (circled)
Jude (circled)

Gen Cat (circled)

and providing a penalty (circled)

1 AN ACT ... relating to: civil liability for performing a sex-selective abortion

compensatory (circled)

compensatory (circled)

Analysis by the Legislative Reference Bureau

This bill creates a prohibition against performing a sex-selective abortion. Under the bill, a sex-selective abortion is an abortion performed, requested, or sought solely because of the sex of the unborn child.

Under the bill, the mother, father, or grandparent of an unborn child that is aborted in a sex-selective abortion may sue the person who performed the abortion for civil damages, including emotional and psychological harm. Under the bill, if a court awards damages for actual harm caused by the sex-selective abortion, the person who performed the abortion is also required to pay exemplary damages of \$10,000 and the plaintiffs' attorney fees.

Under the bill, the mother, father, or grandparent of an unborn child that is aborted in a sex-selective abortion may also seek injunction relief, wherein the court may enjoin the person who performed the abortion from performing another sex-selective abortion. If the person violates the terms of the injunction, the bill requires the court to hold the person in civil contempt of the order and requires the person to pay a civil penalty of \$10,000 for a first violation, \$50,000 for a second violation, and \$100,000 for a third and for each subsequent violation.

The bill requires that a civil action seeking redress for a sex-selective abortion be held privately, and that the names of all of the plaintiffs in the action be kept confidential, unless the plaintiffs request that the proceedings be held in open court.

For further information see the **state** fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

¹
SECTION 1. 253.103 of the statutes is created to read:

253.103 Sex-selective abortion prohibited. (1) In this section:

(a) "Abortion" means the use of an instrument, medicine, drug or other substance or device with intent to terminate the pregnancy of a woman known to be pregnant or for whom there is reason to believe that she may be pregnant and with intent other than to increase the probability of a live birth, to preserve the life or health of the infant after live birth or to remove a dead child.

(b) "Child" means a human being from the time of fertilization until it is completely delivered from a pregnant woman. ✓

(c) "Sex-selective abortion" means an abortion of a child that is performed, requested, or sought solely on account of the sex of the child. ✓

(2) No person may perform a sex-selective abortion. Any person who violates this section may be subject to civil liability and civil penalties under s. 895.039. ✓

X 14 SECTION 2. 895.039^a of the statutes is created to read:

15 **895.039 Sex-selective abortions; liability.** (1) In this section:

16 (a) "Child" has the meaning given in s. 253.103 (1) (b). ✓

17 (b) "Sex-selective abortion" is an abortion performed contrary to s. 253.103. ✓

18 (2) Either parent or a grandparent of ^athe child aborted by a sex-selective
19 abortion has a claim for appropriate relief against the person who performed the
20 sex-selective abortion. This subsection applies even if the person or if the mother
21 of the child consented to the performance of the sex-selective abortion.

in violation of

for harm caused by

(3) Relief available under sub. (2) may include:

compensatory

(a) Compensatory and exemplary damages. A court may award damages arising out of the performance of the sex-selective abortion, including damages for personal injury and emotional and psychological distress, and if compensatory damages are awarded, shall award exemplary damages of not less than \$10,000.

(b) Injunctive relief. A court may issue an order enjoining a person from performing an abortion contrary to s. 253.103. If the person violates the terms of the injunction, the court shall adjudge the person in civil contempt of the order and shall impose a civil penalty against the person for contempt in an amount of \$10,000 for a first violation, \$50,000 for a ^{2nd} second violation, and \$100,000 for a ^{3rd} third and for each subsequent violation and may grant any other relief the court determines is just and proper in the circumstances. For the purpose of this paragraph, each time a person performs a sex-selective abortion after being enjoined from doing so, he or she commits a violation of the terms of the injunction.

(c) Attorney fees. Notwithstanding s. 814.04 (1), the court shall award a prevailing plaintiff reasonable attorney fees.

the grandparents

(4) CONFIDENTIALITY. The identity of any person bringing an action under this section shall be kept confidential and may not be disclosed, except to the court, the parties, their counsel, witnesses, and other persons approved by the court. All papers filed in and all records of a court relating to an action under this section shall identify the woman on ^{fix} whom the sex-selective abortion that is the subject of the action was performed as "Jane Doe" and shall identify her parents and the father of the child by initials only. All hearings relating to an action under this section shall be held in chambers unless all plaintiffs in an action request a hearing in open court. If a public hearing is not held, only the parties, their counsel, witnesses, and other

1 persons requested by the court, or requested by a party and approved by the court,
2 may be present.

3 (END)

d-note

**DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-0650/P1dn

PJH:f:....

js

late

Representative Kestell,

Please review this draft to ensure that it is consistent with your intent. If you have any questions or would like any changes to the draft, please let me know. When the draft meets your approval, I can redraft it into introducible form. /

Peggy Hurley
Legislative Attorney
Phone: (608) 266-8906
E-mail: peggy.hurley@legis.wisconsin.gov

**DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-0650/P1dn
PJH:cjs:jm

March 18, 2013

Representative Kestell,

Please review this draft to ensure that it is consistent with your intent. If you have any questions or would like any changes to the draft, please let me know. When the draft meets your approval, I can redraft it into introducible form.

Peggy Hurley
Legislative Attorney
Phone: (608) 266-8906
E-mail: peggy.hurley@legis.wisconsin.gov



State of Wisconsin
2013 - 2014 LEGISLATURE



LRB-0650/P1

PJH:cjs:jm

8/25/13

1/1/14

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

3-20-13

SA ✓

Gen Cat

knowingly

- 1 AN ACT ~~to create~~ 253.103 and 895.039 of the statutes; **relating to:** civil liability
- 2 for performing a sex-selective abortion, and providing a penalty.

Analysis by the Legislative Reference Bureau

This bill creates a prohibition against performing a sex-selective abortion. Under the bill, a sex-selective abortion is an abortion performed, requested, or sought solely because of the sex of the unborn child.

Under the bill, the mother, father, or grandparent of an unborn child that is aborted in a sex-selective abortion may sue the person who performed the abortion for compensatory civil damages, including for emotional and psychological harm. Under the bill, if a court awards compensatory damages, the person who performed the abortion is also required to pay exemplary damages of \$10,000 and the plaintiffs' attorney fees.

Under the bill, the mother, father, or grandparent of an unborn child that is aborted in a sex-selective abortion may also seek injunction relief, wherein the court may enjoin the person who performed the abortion from performing another sex-selective abortion. If the person violates the terms of the injunction, the bill requires the court to hold the person in civil contempt of the order and requires the person to pay a civil penalty of \$10,000 for a first violation, \$50,000 for a second violation, and \$100,000 for a third and for each subsequent violation.

The bill requires that a civil action seeking redress for a sex-selective abortion be held privately, and that the names of all of the plaintiffs in the action be kept confidential, unless the plaintiffs request that the proceedings be held in open court.



For further information see the **state** fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

has the meaning given in s. 253.10 (2)(a).

SECTION 1. 253.103 of the statutes is created to read:

253.103 Sex-selective abortion prohibited. (1) In this section:

(a) "Abortion" means the use of an instrument, medicine, drug or other substance or device with intent to terminate the pregnancy of a woman known to be pregnant or for whom there is reason to believe that she may be pregnant and with intent other than to increase the probability of a live birth, to preserve the life or health of the infant after live birth, or to remove a dead child.

(b) "Child" means a human being from the time of fertilization until it is completely delivered from a pregnant woman.

(c) "Sex-selective abortion" means an abortion of a child that is performed, requested, or sought solely on account of the sex of the child.

Knowing that it is a sex-selective abortion

(2) No person may perform a sex-selective abortion. Any person who violates this section may be subject to civil liability and civil penalties under s. 895.039.

SECTION 2. 895.039 of the statutes is created to read:

895.039 Sex-selective abortions; liability. (1) In this section:

(a) "Child" has the meaning given in s. 253.103 (1) (b).

(b) "Sex-selective abortion" is an abortion performed in violation of s. 253.103.

(2) Either parent or a grandparent of a child aborted by a sex-selective abortion has a claim for appropriate relief against the person who performed the sex-selective abortion. This subsection applies even if the person or if the mother of the child consented to the performance of the sex-selective abortion.

1 (3) Relief available under sub. (2) may include:

2 (a) Compensatory and exemplary damages. A court may award compensatory
3 damages for harm caused by the performance of the sex-selective abortion, including
4 damages for personal injury and emotional and psychological distress, and if
5 compensatory damages are awarded, shall award exemplary damages of not less
6 than \$10,000.

7 (b) Injunctive relief. A court may issue an order enjoining a person from
8 performing an abortion contrary to s. 253.103. If the person violates the terms of the
9 injunction, the court shall adjudge the person in civil contempt of the order and shall
10 impose a civil penalty against the person for contempt in an amount of \$10,000 for
11 a first violation, \$50,000 for a 2nd violation, and \$100,000 for a 3rd and for each
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13 proper in the circumstances. For the purpose of this paragraph, each time a person
14 performs a sex-selective abortion after being enjoined from doing so, he or she
15 commits a violation of the terms of the injunction.

16 (c) Attorney fees. Notwithstanding s. 814.04 (1), the court shall award a
17 prevailing plaintiff reasonable attorney fees.

18 (4) The identity of any person bringing an action under this section shall be
19 kept confidential and may not be disclosed, except to the court, the parties, their
20 counsel, witnesses, and other persons approved by the court. All papers filed in and
21 all records of a court relating to an action under this section shall identify the woman
22 on whom the sex-selective abortion that is the subject of the action was performed
23 as “Jane Doe” and shall identify the grandparents and the father of the child by
24 initials only. All hearings relating to an action under this section shall be held in
25 chambers unless all plaintiffs in an action request a hearing in open court. If a public

1 hearing is not held, only the parties, their counsel, witnesses, and other persons
2 requested by the court, or requested by a party and approved by the court, may be
3 present.

4 (END)

2013 DRAFTING REQUEST

Bill

Received:	11/28/2012	Received By:	phurley
Wanted:	As time permits	Same as LRB:	
For:	Steve Kestell (608) 266-8530	By/Representing:	Chris
May Contact:		Drafter:	phurley
Subject:	Courts - miscellaneous/other Criminal Law - abortion	Addl. Drafters:	
		Extra Copies:	

Submit via email: **YES**
 Requester's email: **Rep.Kestell@legis.wisconsin.gov**
 Carbon copy (CC) to:

Pre Topic:

No specific pre topic given

Topic:

Sex selective abortion

Instructions:

See attached
 t/c 1-3-13 with Chris Kulow. Put in hold for now; office is still determining direction for this draft.

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/P1	phurley 2/27/2013	csicilia 3/18/2013	jmurphy 3/18/2013	_____	sbasford 3/18/2013		State

FE Sent For:

Handwritten: 1 gjs 3/27/13 <END> 3/27/13